

REMARKS

I. Status of the Claims

Claims 1-74, 157, and 158 are pending in the application. Claims 75-156, 159, and 160 have been withdrawn from consideration. No claims have been amended.

II. Claim Rejection under 35 U.S.C. § 102

Claims 1-5, 9-15, 17-24, 26-32, 34-40, 44-50, 52-59, 61-67, 69-73, 157, and 158 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,223,252 ("Kolc et al."). Office Action at p. 2. Applicants respectfully traverse this rejection.

A rejection under § 102 is only proper when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); see also M.P.E.P. § 706.02(a) ("For anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly."). Importantly, each and every element of a claim must be set forth in the prior art reference for there to be anticipation. See M.P.E.P. § 2131.

The Examiner states that Kolc teaches "a mild alkaline reducing composition for permanently waving or reshaping human hair" comprising from about 2.0 - 3.0% of a cysteine compound, amines such as alkanolamine and ammonia, and metal hydroxides. Office Action at pp. 2-3.

Applicants respectfully disagree. As is evidenced from the Examiner's rejection which pulls together disclosure from various sections of Kolc, one of ordinary skill in the art would have to pick and choose from the various additional ingredients in Kolc to

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arrive at the combination of the at least one organic nucleophile, present in the claimed amount, and at least one hydroxide ion generator, as recited in claim 1. Kolc teaches that the composition must have a pH within a particular range, the range "depending upon the type of hair being permanently waved." *Id.* at col. 5, lines 61-67. The pH range can be achieved by a number of different ingredients, such as "alkanolamine, ammonia, an ammonium carbonate, and/or a metal hydroxide." *Id.* Kolc teaches a wide variety of possible compositions, and one would have to pick and choose from a variety of bases to arrive at the hydroxide-containing ingredient. Thus, one of ordinary skill in the art would have to use hindsight to arrive at the claimed composition because Kolc does not provide specific guidance for the claimed invention.

Additionally, claim 1 is directed to a composition for lanthionizing keratin fibers. As described in the specification, lanthionizing refers to "relaxing or straightening of keratin fibers by hydroxide ions." *Specification* at p. 2. Kolc, in contrast, generally teaches a "cysteine-based composition and method for relatively permanently reshaping or curling human hair into a lasting curl pattern." *Kolc* at col. 1, lines 9-12. Because Kolc teaches a permanent wave composition, one of ordinary skill in the art would readily recognize that Kolc's formulations would not have a sufficient pH to achieve lanthionization.

Claim 36 is directed to a pretreatment composition comprising at least one organic nucleophile present in an amount effective to increase the tensile strength of keratin fibers. Kolc fails to teach the benefit of a pretreatment composition capable of increasing the tensile strength of keratin fibers, and thus, fails to teach any such

composition having the at least one organic nucleophile in the required amount to achieve the tensile strength increase.

"The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). As this disclosure is not present in Kolc, Applicants respectfully submit that Kolc does not anticipate the claimed invention. Accordingly, Applicants respectfully request withdrawal of this rejection.

III. Claim Rejection under 35 U.S.C. § 103

Claims 6-8, 16, 25, 41-43, 51, 60, 68, and 74 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,223,252 ("Kolc et al.") in view of U.S. Patent No. 5,753,215 ("Mougin et al."). Office Action at pp. 3-4. Applicants respectfully traverse this rejection.

In order to establish a *prima facie* case of obviousness, the Examiner must demonstrate that there is some suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine reference teachings. See M.P.E.P. § 2143.

The Examiner concedes that Kolc fails to teach organic nucleophiles such as arginine and lysine, or salts as claimed. Office Action at p. 3. Thus, Mougin is relied upon for teaching "organic nucleophiles such as lysine, arginine or cystine and polyvalent metal salts such as chloride ..." *Id.* at p. 4. The Examiner supports the combination by stating that "the primary reference teaches the use of cystine [*sic*], which is equivalent to the arginine and lysine as taught by Mougin." *Id.*

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Applicants respectfully disagree. Kolc teaches a "cysteine-based composition." Col. 1, lines 9-10 (added emphasis). Although Kolc's composition is used to achieve relinking of "sulfur to sulfur cystine bonds" (see col. 1, line 46), it is clear that Kolc's composition contains cysteine as one of its principal ingredients. Cysteine is a nonessential amino acid derived from cystine.¹ In contrast, Mougin teaches exemplary diamines such as "lysine, arginine or cystine." *Mougin* at col. 4, line 27 (added emphasis). Thus, the Examiner's belief that Mougin teaches the equivalency of lysine or arginine with the cysteine of Kolc is misplaced, and thus, cannot be used to support the combination of references.

Moreover, Mougin teaches a composition for application to hair containing a pseudo-latex. *Mougin* at col. 1, lines 6-8. The pseudo-latex consists of "particles of a film-forming polymer containing carboxylic acid functions neutralized to a degree of neutralization between 10 and 80% using a polyfunctional neutralizing agent consisting either of a diamine or of the combination of a polyvalent metal salt and an organic or inorganic base." *Id.* at col. 1, lines 50-60. Thus, Mougin teaches the use of diamines or polyvalent metal salts as "neutralizing agents" to neutralize the film-forming polymer. *Id.* at col. 4, line 26 and 32-33.

Applicants respectfully submit that the combination of Kolc and Mougin is improper. The cited references do not suggest or motivate one of ordinary skill in the art to use the neutralizing agents of Mougin, e.g., arginine or lysine, as a nucleophile in the composition of Kolc. The composition of Kolc does not include latexes that require neutralization. Therefore, one of ordinary skill in the art would have no motivation to

¹ *Hawley's Condensed Chemical Dictionary*, Thirteenth Ed., Van Nostrand Reinhold, New York, 1997.

add any neutralizing agent to Kolc's composition, much less the neutralizing agents of Mougine. Moreover, there is no teaching in any of the references that the neutralizing agents of Mougine can be used as a nucleophile, particularly as a nucleophile in the composition of Kolc. The substitution suggested by the Examiner requires a leap in logic without any guidance to do so.

The Examiner further supports the combination of references by stating that Mougine is "analogous art of hair cosmetic composition." The case law states that evidence of a suggestion or motivation to modify or combine references teachings must be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). An "analogous art" basis is too vague to comply with the rigid "clear and particular" requirement set forth by the Federal Circuit.

Applicants respectfully submit that a *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request that the rejection be withdrawn.

IV. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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